

LEASE

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INTERSTATE COMMERCE COMMISSION

AGREEMENT made and entered into this 1st day of October, 1974, between

TRACK TWO COMPANY

(hereunder called "Lessor"), and

PICKENS RAILROAD COMPANY

A South Carolina Corporation

(hereunder called "Lessee").

RECITALS

Lessee desires to lease from Lessor certain railroad cars, hereinafter specifically designated, all upon the rentals and terms and conditions set forth in this Lease.

AGREEMENT

It is Agreed:

1. Lease of Cars. Lessor agrees to lease to Lessee and Lessee agrees to and does hereby lease from Lessor 82 fifty foot, seventy ton freight cars. The cars covered by this Lease are those which shall be delivered to and accepted by Lessee pursuant to Paragraph 3 hereof. The cars shall be assigned Road Numbers PICK 55118 through PICK 55199, inclusive.

2. Delivery of Cars. Lessor shall deliver the cars as promptly as is reasonably possible from time to time. Lessor shall not be responsible for failure to deliver or delay in delivering cars due to casualties and contingencies beyond its direct control, such as, but not limited to, labor difficulties, fire, delays and defaults of carriers and car and material suppliers. Initial delivery shall be f.o.b. Pickens, South Carolina.

Thereafter, Lessee shall be liable for, and shall pay or reimburse Lessor for the payment of, all costs, charges and expenses of any kind whatsoever on account of or relating to switching, demurrage, detention, storage, transportation or movement of cars.

3. Condition of Cars -- Acceptance. All cars delivered hereunder shall be in satisfactory condition for movement in the normal interchange of rail traffic and shall otherwise comply with the description and/or specifications of the Interstate Commerce Commission; but Lessee shall be solely responsible for determining what cars are in proper condition for loading and shipment. Within five (5) days after Lessor shall give Lessee notice that some or all cars are ready for delivery, Lessee may have its authorized representative inspect such cars at (the point of delivery) and accept or reject them as to condition.

Cars so inspected and any cars which Lessee does not elect to inspect shall be conclusively deemed to meet all requirements of this Lease and any differences or discrepancies from specified condition, construction, type, equipment, or otherwise, are thereby waived by Lessee without further act on its part. Lessee shall issue and deliver to Lessor with respect to all Cars accepted as or deemed hereunder to meet the requirements of this Lease, a Certificate of Inspection and Acceptance in the form acceptable to Lessor.

4. Term. This Lease shall be for a term (hereinafter referred to as the "original term") which shall commence on the date of delivery by Lessor of the first Car, as provided in Paragraph 2 hereof, and shall terminate five (5) years from the last Date of Delivery unless sooner terminated in accordance with the provisions of this Lease.

5. Termination Date. After delivery of the Cars, Lessor shall confirm to Lessee the last date of Delivery and the date of expiration of the original term set forth in Paragraph 5 hereof.

6. Rental. Lessee shall pay to Lessor as rental for each Car, during the original term, from and including the date of delivery of such Car, the sum of

\$235.20 per month

adjusted as provided hereinafter in Paragraph 21.

7. Payment. Lessee shall make payment of the rental as well as any other sums due hereunder to Lessor in Greenville, South Carolina, or such other place as Lessor may direct. Rental payments shall be made on or before the 15th day of the third month succeeding the month for which such rental has accrued.

8. Title. Lessor has or will have title to the Cars at the time they are delivered hereunder to Lessee and Lessee shall not by reason of this Lease or any action taken hereunder acquire or have any right or title in the Cars except the rights herein expressly granted to it as Lessee.

9. Maintenance. Lessor shall, during the continuance of this Lease, promptly and with due diligence, keep and maintain the Cars in good working order and repair (ordinary wear and tear excepted) and make all replacements, changes or additions to the Cars or their equipment and appliances to the extent necessary or required from time to time.

(a) by the Interchange Rules; and

(b) by applicable laws and regulations of any state or governmental body, including specifically but not exclusively, the Interstate Commerce Commission.

all at Lessor's own cost and expense. At Lessor's request Lessee shall arrange for the maintenance of repair of such Cars and Lessor

agrees to reimburse Lessee for all such items of cost of expense within fifteen (15) days after written request to do so. The provisions of Paragraph 16 hereof shall apply in the event of damage or destruction beyond repair. Any parts, replacements, or additions made to any car shall be accessions to such Car and title thereto shall be immediately vested in Lessor.

10. Taxes and Other Levies. Lessor shall promptly pay all taxes, assessments and other governmental charges, including ad valorem taxes levied or assessed during the continuance of this Lease upon the Cars.

11. Liens. Lessee shall keep the Cars free from any encumbrances or liens, which may be a cloud upon or otherwise affect Lessor's title, which arise out of any suit involving lessee, or any act, omission or failure of Lessee or Lessee's failure to comply with the provisions of this Lease, and shall promptly discharge any such lien, encumbrance or legal process.

12. Indemnity. Lessee agrees to indemnify Lessor and save it harmless from any charge, loss, claim, suit, expense or liability which Lessor may suffer or incur and which arises in connection with the use or operation of a Car or Cars while subject to this Lease and without regard as to how such charge, loss, claim, suit, expense or liability arises, including without limiting the generality of the foregoing, whether it arises from latent or other defects which may or may not have been discoverable by Lessor.

13. Warranty -- Representations. Except as otherwise provided in Paragraph 8, Lessor makes no warranty or representation of any kind whatsoever, either express or implied as to any matter whatsoever, including specifically but not exclusively, fitness, design, workmanship, condition or quality of the Cars or parts thereof which Cars have been accepted by Lessee hereunder, and Lessor shall have no liability hereunder for damages of any kind, including specifically but not exclusively, special, indirect, incidental, or consequential on account of any matter which would otherwise constitute a breach of warranty or representation.

14. Car Marking. Each Car upon delivery will be distinctly, permanently and conspicuously marked in stencil with a legend on each side in letters not less than one inch (1") in height with Lessor's name followed by the word owner. There shall be added in addition the following inscription:

Title to this Car subject to documents
recorded under Section 20(c) of Inter-
state Commerce Act.

15. Inventory. During the continuance of this Lease, Lessee shall, upon request of Lessor but not more than once every year, furnish to Lessor an accurate inventory of all Cars in service.

16. Loss, Theft or Destruction of Cars. In the event any Car is lost or stolen or is destroyed or damaged beyond economical repair, Lessee shall promptly and fully inform Lessor of such occurrence. If, upon the occurrence of such event, Lessor does not receive payment for such Car pursuant to the Interchange Rules, because same are not applicable or otherwise, Lessee shall upon demand by Lessor promptly make payment to Lessor in the same amount as provided in such Rules where applicable to the occurrence of such event for like Cars. Lessee shall cooperate with Lessor and take any and all action required to assist and enable Lessor to receive such payment directly from any handling line or other person, firm or corporation bound to make a payment under Interchange Rules. This Lease shall continue in full force and effect irrespective of the cause, place or extent of any damage, loss or destruction of any of the Cars; provided, however, that this Lease shall terminate with respect to any Car which is lost, stolen or destroyed or damaged beyond repair on the date Lessor shall receive all amounts and things required on account of such Car under this Paragraph 16 and Lessee shall have no further liability to Lessor hereunder, except for accrued rent and such as arises or exists under Paragraphs 10, 11 and 12.

17. Return of Cars. Upon the expiration or upon the termination of this Lease with respect to any Car (other than pursuant to Paragraph 16 hereof), Lessee shall at its sole cost and expense,

(a) forthwith surrender possession of such Car to Lessor in good condition by delivering same to Lessor at such place within the Continental United States as Lessor shall direct; and

(b) if Lessor shall so request by written notice delivered prior to surrender of possession of such Car as above provided, provide suitable storage for such Car, for a period of ninety (90) days from the date of expiration or termination and inform Lessor of the place of storage and the reporting number of the Car there stored.

Delivery in storage shall constitute delivery of possession for the purpose of this Paragraph 17 and such storage shall be at the risk of Lessor. Upon termination of the storage period or upon request of Lessor prior thereto, Lessee shall cause the Car to be transported to Lessor at the place and in the manner provided in this Paragraph 17(a).

18. Default. The term "event of default" for the purpose hereof shall mean any one or more of the following:

(a) non-payment by Lessee within twenty (20) days after the same becomes due of any installment of rental or any other sum required to be paid hereunder by Lessee; provided Lessor has given ten (10) days written notice of such default.

(b) the Lessee shall default or fail for a period of twenty (20) days in the due observance or performance of any covenant, condition or agreement required to be observed or performed on its part hereunder; provided Lessor has given ten (10) days written notice of such default.

(c) a decree or order shall be entered by a court having jurisdiction in the premises adjudging Lessee a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of Lessee under the Federal Bankruptcy Act or any other applicable Federal or State law, or appointing a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Lessee or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of thirty (30) days;

(d) the institution by Lessee of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the institution of any proceedings or to any action taken or proposed to be taken in any proceedings or action described in the foregoing subparagraph (c), or the making by Lessee of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by Lessee in furtherance of any such action.

19. Remedies. Upon the happening of an event of default, Lessor, at its option, may:

(a) proceed by appropriate court action either at law or in equity for specific performance by the Lessee all damages, including specifically but not exclusively, expenses and attorneys' fees which Lessor may sustain by reason of Lessee's default or on account of Lessor's enforcement of its remedies hereunder.

(b) elect only to terminate the Lessee's right of possession (but not to terminate the Lease) without releasing Lessee in whole or in part from its liabilities and obligations accrued hereunder, or hereafter to accrue for the remaining term of the Lease, and thereupon require Lessee to deliver all such Cars to Lessor at any of its plants or to take possession itself, of any or all of the Cars wherever same may be found. Lessor may, but need not, require delivery of the Cars to it or repossess the Cars, but in the event the Cars are delivered to Lessor or are repossessed, Lessor shall use reasonable efforts to relet the same or any part thereof to others upon a reasonable

rental and such other terms as it may see fit. The proceeds of any such reletting shall first be applied to the expenses (including reasonable attorneys' fees) of retaking and reletting of the Cars and delivery to the new lessee and then to the payment of rent due under this Lease. Lessee shall pay any deficiency remaining due after so applying the proceeds as the same shall accrue. Lessee shall not assert, in mitigation of its damages or otherwise, any lack of diligence by Lessor in or related to the procuring of another lessee or in refusing to accept any proposed or prospective lessee or other transaction, such matters being within Lessor's sole discretion and determination. The election by Lessor to relet the Cars and the acceptance of a new lessee shall not operate to release Lessee from liability for any existing or future default in any other covenant or promise herein contained;

(c) declare this Lease terminated and recover from Lessee all amounts then due and payable plus, as liquidated damages for loss of the bargain and not as penalty, a sum which represents the excess of the present worth, at the time of such termination, if any, of the aggregate rental which would have thereafter accrued from the date of such termination to the end of the original term over the then present worth of the fair rental value of the Cars for such period. Present worth is to be computed in each case on the basis of a five per cent (5%) per annum discount, compounded annually from the respective dates upon which rental would have been payable hereunder had this Lease not terminated. In addition to the foregoing, Lessor shall recover any damages sustained by reason of the breach of any covenant of the Lease other than for the payment of rental;

(d) recover or take possession of any or all of the Cars and hold, possess and enjoy the same, free from any right of the Lessee to use the Cars for any purposes whatsoever.

The remedies provided in this Paragraph 19 in favor of Lessor shall not be deemed exclusive but shall, where not by rule of law inconsistent with each other, be cumulative and may be availed of singly, in combination, or all together and in any order, and shall be in addition to all other remedies, in Lessor's favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law now or hereafter in effect which might limit or modify any of the remedies herein provided to the extent that such waiver is permitted by law.

20. Sublease and Assignment. Lessee shall have no right to sublease any of the Cars without the consent of Lessor. Lessor has mortgaged its interest in these Cars prior to and superior to Lessee's rights hereunder.

All rights of Lessor hereunder may be further assigned, pledged, mortgaged, transferred or otherwise disposed of either in whole or in part with or without notice to Lessee, but subject to Lessee's rights under this Lease. If Lessor shall have given written notice to Lessee stating the identity and post office address of any assignee entitled to receive future rentals and any other sums payable by Lessee hereunder, Lessee shall thereafter make such payments to the designated assignee. Lessee will not amend, alter or terminate this Lease without the consent of the assignee while such assignment is in effect.

21. Adjustments to Rental. The rental hereunder shall be reduced proportionately for each day that any Car is out of service through no fault of Lessee. The rental hereunder shall be increased by mileage payments received by Lessee from other railroads. In the event the per diem rates paid to Lessee by other railroads are increased over those rates in force at the time of execution of this Agreement, the basic rental specified in Paragraph 6 of this Agreement shall be increased by a percentage equal to the percent by which the per diem rate specified for such Cars by the I.C.C. has been increased.

22. Notice. Any notice required or permitted to be given pursuant to the terms of this Lease shall be properly given when forwarded registered United States mail, return receipt requested, postage prepaid, addressed to:

Lessor at: 201 Boxwood Lane
Greenville, South Carolina

or at such other address as Lessor may from time to time designate by notice in writing, and to:

Lessee at: 402 Cedar Rock Street
Pickens, South Carolina

or any such other place as Lessee may from time to time designate by notice in writing.

23. Recording of Lease. Prior to the delivery and acceptance of the first Car, Lessor intends, without expense to Lessee, to cause this Lease and any assignment thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20(c) of the Interstate Commerce Act. Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, reregister, or rerecord whenever required) any and all further instruments required by law or reasonably requested by Lessor, for the purpose of proper protection

to the satisfaction of counsel for Lessor, of its title to the Cars, or for the purpose of carrying out the intention of this Lease. Except as hereinbefore provided, Lessee will pay all costs, charges and expenses incident to the filing, refiling, registering, reregistering, recording and rerecording of any such further instrument or incident to the taking of any such other action, and will furnish to Lessor certificates or other evidence of any such action.

24. Governing Law--Writing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of South Carolina. The terms of this Lease and the rights and obligations of the parties hereto may not be changed or terminated orally, but only by agreement in writing signed by the party against whom enforcement of such change or termination is sought.

25. Counterparts: This Lease may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be evidenced by any such signed counterpart.

26. Benefit. The covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of the parties, their successors, heirs, and assigns.

IN WITNESS WHEREOF, Lessor and Lessee have duly executed this Lease as of the day and year first above written.

TRACK TWO COMPANY

By: STERLING CAPITAL, LTD., *General Partner*

By: John M. Sterling, Jr.
President

(LESSOR)

ATTEST:

C. L. C. Kell
Assistant Secretary

ATTEST:

John A. Guir
Secretary

PICKENS RAILROAD COMPANY,
a South Carolina Corporation

By: O. Monroe
President

(LESSEE)

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

On this 1st day of October, 1974, before me personally appeared John M. Sterling, Jr., to me personally known, who, being by me duly sworn, says that he is the President of Sterling Capital, Ltd., General Partner of Track Two Company, the Owner of the railroad cars described in the foregoing instrument, and William W. Kehl, to me personally known to be the Assistant Secretary of Sterling Capital, Ltd.; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed on behalf of said Corporation as General Partner of Track Two Company by authority of its Board of Directors and they acknowledged that the execution of the foregoing instrument was its free act and deed.

Gene S. Gillespie (L.S.)
Notary Public for South Carolina
My Commission Expires: 2-28-80

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

On this 1st day of October, 1974, before me personally appeared ^{Orville G. Monroe} ~~John A. Muir~~, to me personally known, who, being by me duly sworn, says that he is ^{President} ~~Secretary~~ of Pickens Railroad Company, and John A. Muir to me personally known to be the Secretary of said corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Lee M. Almond (L.S.)
Notary Public for South Carolina

Notary Public, South Carolina State at Large
My Commission Expires: My Commission Expires Mar. 21, 1982